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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]
LIN 02 145 54392

Office: NEBRASKA SERVICE CENTER

Date:

APR 05 2005

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maui Johnson

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, a non-profit religious organization, seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks to employ the beneficiary as a "Director of Hand-Embroidered Religious Articles." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as an alien of exceptional ability, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director found that the beneficiary qualifies as an alien of exceptional ability. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as

“exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given occupation is so important that any alien qualified to work in this occupation must also qualify for a national interest waiver. At issue is whether this beneficiary's artistic contributions are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. The petitioner must demonstrate the beneficiary's past history of achievement having some degree of influence on the field as a whole. *Id.* at note 6.

According to Form ETA-750B, from 1994 to 2003, the beneficiary served as “Owner/President” of [REDACTED] overseeing “the design, production, and marketing of hand-embroidered church vestments and religious articles from the [REDACTED] and post-Byzantine period.” Form ETA-750B further states that the beneficiary works “in joint collaboration with Orthodox Missions to design, produce and market the sale of hand-embroidered religious vestments and articles for the Orthodox and Greek Communities in both the United States and abroad.”

The beneficiary further describes his work, stating:

Today, not one piece of embroidery work in [sic] available throughout all the Orthodox world fully hand embroidered. To the contrary, Clergy and Churches seeking vestments or other religious items are offered “production line” designs and finished products produced on machines through computer technology with only the final touches performed by hand.

Our work therefore in cooperation with “Orthodox Missions Mexico” is not only important but vital and an imperative for the preservation and resurrection of this most important art form. Our embroidery is the only available embroidery available to the Orthodox Church today, performed totally by hand. Furthermore, our artisans have mastered the technique of embroidering perfectly designed figures and faces, something rarely available even by the famous Embroidery Houses of the Fanariote period.

The petitioner provided several letters in support of the petition.

Metropolitan Archbishop Athenagoras is the Archbishop for Central America and the Caribbean for the Greek Orthodox Church. He states:

Orthodox Missions seeks to employ [the beneficiary] on a permanent full-time basis as the Director of its Hand-Embroidered Religious Articles business. This enterprise was initiated in 1998 as a cooperative venture between Orthodox Missions and [the beneficiary's] own successful and internationally known company, [REDACTED]

* * *

Orthodox Missions Mexico/Central America/Caribbean, Inc. is a not-for-profit corporation organized under the laws of the State of New York to operate exclusively religious and charitable purposes

* * *

As our missions work increases, it is necessary to raise funds from the United States and other developed countries to support it. In the past our fundraising efforts consisted of selling candles to parishes and other relatively modest efforts. However, our most ambitious and successful plan for this purpose has been the development of hand embroidered religious vestments and other religious items in the style and based on patterns of Byzantine items, to be offered for sale to an enthusiastic and virtually limitless market for such products. [The beneficiary] is uniquely situated to serve this need owing to his many years of experience with designing and producing the highest quality hand embroidered products

* * *

[The beneficiary] has collected and mastered an array of Church patterns and examples. He has produced numerous religious embroidery works of art which are being hailed in the Christian East, among all the Orthodox Churches and even within the Catholic and Anglican communions as unique and valuable for worship and the perpetuation of the Christian Church in the West. In our cooperative venture, we employ thirteen full-time skilled artisans in Pakistan whom [the beneficiary] oversees and who produce religious articles to order. . . . [The beneficiary's] use of threads and material and his ability to create intricate hand embroidered details, such as faces, is simply unmatched in modern times.

* * *

Since 1998 [the beneficiary] has worked directly under my supervision in the United States and Mexico to produce superb hand embroidered religious items for sale in the United States and Mexico. This work has been recognized by many Church and other authorities as a significant contribution to world Orthodoxy in preserving its traditions.

In addressing how the beneficiary's work will benefit the national interest of the United States, Archbishop Athenagoras states that the beneficiary's employment will continue to revive "a lost art of critical importance to the Orthodox Church worldwide." We accept that the beneficiary's work will benefit the artistic interests of the Greek Orthodox Church, but his ability to significantly impact the national interest of the United States has not been adequately demonstrated. The supervision of Orthodox Missions' hand-embroidered religious articles business is mainly of interest to that particular non-profit organization.

In describing the additional benefits associated with the beneficiary's work, many of Archbishop Athenagoras' claims rest on speculation. For example, Archbishop Athenagoras states:

The growth of this industry should generate an anticipated income in excess of \$ 1 million within several years.

Initially, [the beneficiary] will produce and market his work to the approximately 3000 Orthodox churches in the United States. . . . While the basic embroidery work will continue to be done in Pakistan, the items will then come to the United States for the necessary finish work.

We will next offer the work to the tens of thousands of [redacted] Catholics and the Roman Catholic Church, some of whose entities have already expressed a keen interest in the current catalogue. We will also eventually offer items for sale to the Orthodox Churches in Canada, Australia, Greece and the rest of the Orthodox Churches in Canada, Australia, Greece We have plans to open an Orthodox Missions office in Athens in the near future owing to the keen interest of having these items made more widely available there. [The beneficiary] will oversee all start-up, production and sales functions out of that office as well.

This activity will in turn generate employment opportunities for administrative, production, sales and distribution personnel in the U.S. and will expand the employment of skilled artisans abroad.

The beneficiary's potential to impact the U.S. economy by creating jobs in the United States is entirely speculative. *Matter of New York State Dept. of Transportation* indicates that while education and pro bono legal services are in the national interest, the impact of an individual teacher or lawyer would be so attenuated at the national level as to be negligible. *Id.* at 217, note 3. We find such reasoning applicable to the claim that the beneficiary's work for the petitioner will "generate employment opportunities" as well. In this case, the beneficiary's impact on the U.S. economy would generally be limited to the location in which the petitioner establishes its U.S. business operations. We note that, aside from the national interest waiver that attaches to the visa classification sought by the petitioner, there exists a less restrictive immigrant visa classification specifically for employment creation. Section 203(b)(5) of the Act was established for individuals seeking to enter the United States for the purpose of engaging in a commercial enterprise that will hire at least ten United States citizens. Congress' creation of Section 203(b)(5) of the Act shows that a separate, less restrictive visa classification is intended for those aliens seeking to create jobs for U.S. workers.

The beneficiary currently engages in a business endeavor with the petitioning entity involving yearly sales of less than a million dollars. The beneficiary, like any other capable manager, plays a significant role in directing the activities of his embroidery business. The statute, however, does not automatically qualify business managers/directors for the national interest waiver, and the petitioner does not establish the relative

importance of the beneficiary's activities simply by describing future business goals. By law, advance degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. With regard to Congressional intent, a statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. The nature of the beneficiary's work is to ensure that his company's products from Pakistan are sold overseas; simply being a competent artisan/businessperson is not adequate to demonstrate eligibility for a national interest waiver. We find Archbishop Athenagoras' claims are not adequate to demonstrate that the beneficiary's presence in the U.S. has had, or will have, a significant impact on the U.S. economy through income generated from the sale of his embroidery products or job creation.

The majority of the letters provided in support of the petition focus on the artistic and religious value of the petitioner's work.

President of the Greek Society "PAIDEIA" and the Director of the Department of Hellenic Studies at the University of Connecticut, states:

I have known [the beneficiary] for the last three years. I had the opportunity to meet him through his work with "Orthodox Missions Mexico." I was immediately drawn to his work, since in all my years in the academic field and my extensive travels and studies in Greece, I have never seen anything in hand embroidered religious artifacts, comparable to the work performed by [the beneficiary].

Last year [the beneficiary] was invited to speak during celebration of Greek Letters Week and to raving reviews we exhibited his exceptional work in an exhibit [redacted] and embroidered treasuries.

The execution of his hand embroidery, the art form he has captured, the preciseness of his technique, the quality of work, the care for detail, to my knowledge, have no comparison available either here in the United States or in Greece.

Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for a national interest waiver simply by establishing a certain level of skill, knowledge, or training that could be articulated on an application for a labor certification.

Curator, Department of Medieval Art and The Cloisters, The Metropolitan Museum of Art, New York, states:

I have been asked by Orthodox Missions of Mexico, Central America and the Caribbean, to provide my assessment of [the beneficiary]. . . . As the Metropolitan Museums' specialist on Byzantine art, I have extensively studied the surviving liturgical textiles of the Byzantine world. Much of my research has been done in conjunction with my upcoming exhibition "Byzantium: Faith and Power (1261-1557)" which will have a gallery devoted to the surviving textiles of the Late and immediate postbyzantine world.

Having been introduced to [the beneficiary's] work by Archbishop Athenagoras, I am writing to express my admiration for the superb quality of his workmanship and the exquisite quality of his designs. I have never seen finer contemporary liturgical textiles and would hope that such works would be made available to the clergy in America. [The beneficiary] is providing an exceptional service through the Orthodox Missions and should be encouraged to start a business in America where he could train people to do similar work. No American that I am aware of is doing liturgical textiles at this level nor do they have training to produce similar embroideries.

The Orthodox Church in America is well aware of the labor market that is available to produce vestments. Most have to be brought to this country from Orthodox communities abroad. If [the beneficiary] were allowed to come to America, he could make America a center of local production. Certainly the Metropolitan Museum's merchandizing people are considering obtaining some of his works for sale in my exhibition.

The record, however, contains no evidence showing that the beneficiary's work was ever displayed at the Metropolitan Museum, or at any other U.S. museum for that matter. It is further noted that [redacted] and [redacted] became aware of the beneficiary's work only after their contact with Orthodox Missions.

[redacted] Archbishop of Pittsburgh, states:

With this letter I wish to commend you for the quality work that you are doing with respect to the fabrication of vestments for use in the Byzantine Church.

* * *

The craftsmanship and the attention to detail as exhibited in your work attest to the fact that a quality finished product is your primary goal when making these vestments that are used in divine worship.

The record contains similar letters attesting to the quality of the beneficiary's work from a Ukrainian Orthodox Bishop in Chicago, the Catholic Archbishop of Baltimore, and two religious officials from the Church of Greece in Athens. These letters all note that embroidery work such as the beneficiary's is unique and that his work is preserving religious heritage and cultural tradition.

[redacted] Director of the Archbishop [redacted], [redacted] College Holy Cross Greek Orthodox School of Theology, Brookline, Massachusetts, states:

Although female monastic houses and various individuals in Greece have been engaged in embroidery for the use of the Orthodox Church in Greece and for clergy and parishes in the Greek Orthodox Archdiocese of America, [the beneficiary] employs a technique that is truly unique. While contemporary monastic practices, and those of modern-day individuals, make use of computer-generated patterns and machine embroidery leaving only detail and finish work for manual techniques, [the beneficiary] is the only individual employing entire hand-embroidered work. In addition, he offers a new method of production not seen in the earlier Byzantine and Russian artifacts. Instead of depending on flat, inflexible materials on which to support the embroidery, he rather builds up the embroidery in a three-dimensional method, using modern backing materials and raised embroidery,

permitting greater levels of modulation and depth. This creates a completely new visual effect for the beholder and provides a "pictorial" quality for the hand-embroidered designs. This is a radically different approach and concept of embroidered patterns and figures for Byzantine Orthodox liturgical fabrics.

While the beneficiary may have developed a three-dimensional embroidery method, the record does not indicate the extent of his influence on other artisans, nor does it show that any specific works of the beneficiary are particularly important pieces of textile art. The petitioner has not shown, for example, which of the beneficiary's pieces have garnered significant national attention, command unusually high prices, or are in high demand among museum curators or gallery owners throughout the United States. The assertion that the beneficiary's work might eventually be displayed in a museum, such as the Metropolitan Museum of Art in New York, for example, is not adequate to demonstrate eligibility for a national interest waiver. A petitioner must establish eligibility at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). We find no evidence to support the conclusion that the beneficiary's textile artwork has had a significant national impact.

The director denied the petition, finding that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director's decision stated:

There is no evidence that [the beneficiary] has yet influenced his field to any significant degree. The record contains no published evidence . . . mentioning the beneficiary's work even though . . . he was permitted for three years to work in the United States selling his products. The purpose of the national interest waiver is not to facilitate the entry of small foreign business ventures into the United States.

On appeal, counsel argues that the witness letters "confirm [the beneficiary's] national impact." While the witnesses describe the importance and quality of the beneficiary's work, we must note that their letters of support indicate that they were introduced to the beneficiary by Archbishop Athenagoras. This fact indicates that while the beneficiary's work is valued by those with whom he or Archbishop Athenagoras have had direct contact, others outside of their circle of acquaintances are largely unaware of the beneficiary's textile art and do not attribute the same level of importance to his work. Statements from those familiar with Archbishop Athenagoras do not show, first-hand, that the beneficiary's work is attracting attention on its own merits, as we might expect with textile art that is unusually significant.

Counsel's brief cites several AAO decisions approving national interest waiver petitions. Counsel's attempt to apply statements from previous AAO findings to the current case is flawed. Without the record of proceeding for those cases, there can be no meaningful analysis of the decisions to determine the applicability of the same reasoning to the petitioner's case. See 8 C.F.R. § 103.3(c), which indicates that only designated precedent decisions are binding on Citizenship and Immigration Services' (CIS) officers. Therefore, the petitioner's attempt to apply findings from non-precedential decisions to the current case is flawed.

Counsel discusses the existence of "purchase orders for [the beneficiary's] embroidery work" from Nevada, New York, and Greece. Building a modest business clientele, however, even if one's customers are geographically dispersed, is not adequate to demonstrate eligibility for a national interest waiver. We cannot

ignore Archbishop Athenagoras' statement that "[w]hile the basic embroidery work will continue to be done in Pakistan, the items will then come to the United States for the necessary finish work." If, according to Orthodox Missions' business plans (as described by Archbishop Athenagoras), the majority of the embroidery work overseen by the beneficiary is to be completed by his artisans in Pakistan, then the question necessarily arises as to why the beneficiary requires permanent immigration benefits to reside in the United States. The petitioner's continued participation in the business venture with Orthodox Missions is obviously not contingent on his obtaining permanent resident status.

Counsel states: "[The beneficiary] has obtained a base of knowledge through his years of international travel and concentrated study that is not generally available even among skilled artisans." Pursuant to *Matter of New York State Dept. of Transportation*, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. The fact that many of the petitioner's witnesses indicate that few artisans possess the skills and knowledge equal to that of the beneficiary is an argument against the waiver of the labor certification.

Counsel argues that "it is unrealistic at best, and most likely disastrous to Orthodox Missions' hand embroidery business plans, to expect [the beneficiary] to go through the Department of Labor's lengthy labor certification process." Nothing in the legislative history, however, suggests that the national interest waiver was intended simply as a means for employers to avoid the inconvenience of the labor certification process. In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. As has been observed in *Matter of New York State Dept. of Transportation*, a plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor, by itself, does not compel CIS to grant a national interest waiver of the job offer requirement. As stated previously, the issue here is whether the petitioner's contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. In seeking the additional benefit of a national interest waiver, the petitioner in this case must provide evidence demonstrating that the beneficiary has significantly influenced the artistic field.

We find that the evidence presented in this case is not adequate to demonstrate that the petitioner's work has had, or will have, a nationally significant impact. Many of the assertions made by the petitioner (such as its prediction of income in excess of \$1 million) are entirely speculative. Beyond demonstrating that the beneficiary has served as an effective importer and marketer of quality embroidery products for Orthodox Missions, the petitioner must show that the beneficiary's work is viewed as significantly influential beyond the scope of the Greek Orthodox Church and Archbishop Athenagoras' circle of acquaintances. In this matter, the available evidence does not persuasively demonstrate that the beneficiary's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

As is clear from a plain reading of the statute, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States. The beneficiary directs a promising business, but his talent does not meet the higher burden of national interest.


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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.